



2011 Industry Relations Policy Position

EXECUTIVE SUMMARY

The Electronic Transactions Association (ETA) and its members represent the broad facets of the merchant acquiring industry that serve as the front line for retail electronic payments. ETA members serve an essential role in expanding the acceptance and ubiquity of electronic payments at business locations of all types and sizes throughout the U.S. and around the world. Through its mission and program of work, ETA is committed to advancing the professional business standards of these merchant service providers.

As a recognized and valuable stakeholder in the payments system, the ETA has adopted a set of policy positions on industry issues that reflect the broad interests of its constituents. These policies were developed with input from ETA's members and demonstrate the association's commitment to promoting the growth and integrity of transaction processing in cooperation with each of the payment networks (e.g., American Express, Discover, MasterCard, and Visa).

Through these policy positions, ETA seeks to achieve the following goals:

- Strengthen the System of Interchange to Promote Adaptability and Growth;
- Assure Consistent Application of Rules and Regulations;
- Attain Greater Transparency of Rules and Compliance Information;
- Protect and Maintain Industry Self-Regulation of Data Security Standards;
- Provide Merchants the Option to Assess Fair and Reasonable Fees for Accepting Payment Cards; and
- Achieve Direct Sponsorship for Qualified Payments Companies.



2011 Industry Relations Policy Position

ISSUE: Interchange System

The current system of interchange has driven the tremendous growth of electronic payments and provides significant value to consumers, retailers and the financial services industry. Over the course of the past few years, numerous entities have scrutinized the interchange system. This attention has been primarily related to the price of conducting transactions rather than the infrastructure required to process transactions safely through the interchange system. Interested parties include federal regulators assessing the need and viability of controlling said pricing, as well as merchants and other stakeholders who have initiated numerous acts of litigation and public relations campaigns attempting to influence the rates levied for these services.

The companies in the merchant acquiring industry are primary stakeholders in driving the ubiquitous acceptance of retail electronic payments. As such, they have a vested interest in an interchange system that is secure, equitable, and growth-oriented and enables the highest levels of consumer convenience and confidence. The continued evolution of the current processes will enhance the time-tested and valuable interchange system by ensuring a structure that is adaptable, responsive and a driver of growth and value for all participants.

ETA POSITION:

- ETA advocates for private sector governance of the interchange system and opposes any government effort to regulate or establish price controls on interchange rates.
- ETA advocates for an interchange rate setting process that is recognized by participants and interested parties as transparent, market based, implemented at established, semi-annual intervals, and appropriately communicated to stakeholders throughout the system.
- ETA advocates that the payment networks continue to provide meaningful interchange-based incentives for penetration of new markets, new payment technologies and methodologies for the purpose of enabling the continued growth of the industry.
- ETA advocates for a cooperative effort with the payment networks to conduct outreach initiatives designed to educate consumers, merchants, and policymakers on the benefits of electronic payments and the intricacies and requirements (e.g., costs, technology, etc.) of operating a world-wide payments infrastructure.



2011 Industry Relations Policy Position

ISSUE: Consistent Application of Card Industry Rules and Regulations

Past enforcement actions by the payment networks relating to violations of data security and general operating regulations have appeared to be subjective and inconsistent with regard to the severity of penalties levied. The confidential nature of this rules enforcement system has led to allegations, conjecture, and speculation that such regulations are not uniformly and consistently applied to all system participants, nor that there is an appeals process for those accused of violations. This lack of disclosure has created public relations challenges as federal and state policy makers and the media attempt to understand and assess the effectiveness of the industry's self-regulatory efforts.

Improving access to information on operating requirements, enabling the right to due process and appeal, and providing appropriate disclosure on enforcement actions by the payment networks will improve compliance, mitigate unfavorable perceptions associated with past actions, and make system participants more willing to disclose potential or known infractions thereby improving the efficacy and integrity of the payments system.

ETA POSITION:

- ETA advocates that all entities in the payments system should have timely and full access to the complete requirements of any regulation they are subject to and the criteria for enforcement.
- ETA advocates that entities directly or indirectly subject to the impact of an enforcement action by the payment networks should have the basic rights of due process and appeal. Payment networks should present and follow a documented, time-limited, and uniform process in the course of an enforcement action. Any entity directly or indirectly subject to an enforcement action should have the right to demand full review in order to present any mitigating information relating to the incident.
- ETA advocates that the liability for payment of card network fines be assigned to the party that is found to be responsible for the violation. The payment liability should remain with the party at fault regardless of business agreements entered into or terminated after the violation.
- ETA advocates that in the spirit of transparency and fairness, the payment networks should disclose aggregate summary information about enforcement actions in a manner that does not identify, or in any way compromise, the businesses involved in any active law enforcement investigations.



2011 Industry Relations Policy Position

ISSUE: Operating Regulations, Release Management and Technical Issuances

The payment networks issue multiple updates to operating regulations and technical bulletins at various times during the year, including information on rate, structure and technical changes to their respective interchange systems.

Changes to these operating rules affect the business processes, procedures, technology systems, and equipment of both service providers and merchants. The management and implementation of these multiple and varying requirements creates a significant compliance burden on the acquiring community. In addition, their number, frequency and unpredictable nature creates ill-will with merchants, who experience a constant stream of new conditions, costs and inconvenience. The manner in which payment network change mandates are promulgated contributes significantly to the antagonistic and litigious environment that presently exists between merchants and the payments industry.

Currently, rule changes are generally reported through acquiring banks that pass on the information to non-bank acquirers and service providers in the payments system. Depending on the financial institution, the timing and thoroughness of information delivery varies widely and valuable time can be lost in the implementation process. This can be further exacerbated by compliance deadlines that do not provide adequate lead time for an orderly implementation.

While ETA applauds recent efforts by the payment networks to increase access to operating regulations and interchange related information, further improvements are still needed. Enhancements like an established and predictable schedule for releases, more complete and timely disclosure of information, and adequate time for affected entities to respond to changes will yield significant benefits. These benefits include: 1) greater awareness and communication between the rule-making bodies and those who must implement the requirements; 2) fuller and more timely compliance with operating rules and regulations; 3) stronger overall integrity and effectiveness of the payments system; and 4) better customer relationships and cooperation with merchants. This level of disclosure also will reduce the burden on acquirers and provide a tangible incentive for registration.

ETA POSITION:

- ETA advocates that registered Independent Sales Organizations and 3rd party service providers in good standing have access to complete and accurate information regarding interchange and operating regulations, in a timely manner, directly from the payments networks. This includes notices of fee changes, new rate category announcements, technical bulletins and other information relating to the management and processing of payments.
- ETA advocates that the payment networks strictly adhere to a semi-annual schedule for the release of rate and other operational changes and ensure reasonable lead time for the orderly implementation of these requirements by the entire payments community. Lead times should



2011 Industry Relations Policy Position

be a minimum of 90 days and adjusted upward according to the complexity and scope of actions required for successful implementation of an individual change.

- ETA advocates that wherever possible, the payment networks should cooperatively engage stakeholders in the rule making process as early as possible in advance of proposal development.



2011 Industry Relations Policy Position

ISSUE: Industry Self-Regulation of Data Security Standards

Requirements by the payment networks for the proper handling of cardholder data and the mitigation of fraud are well established and continue to expand and change regularly to respond to emerging threats. Scrutiny from the general public and government officials has increased the pressure and potential for additional regulation related to the protection of card holder data. This has created a commensurate demand on the merchant acquiring industry to manage the increased breadth, depth and complexity of the rules related to data security. These requirements have direct impact on ETA constituents, as well as their customers, and have the potential to pose a significant compliance burden on these companies.

ETA strongly supports industry self-regulatory efforts for the protection of cardholder data, foremost of which is the Payment Card Industry Data Security Standards (PCIDSS). ETA is committed to supporting efforts to promote greater understanding, awareness and compliance with the PCIDSS among its members and other stakeholders. Further, ETA believes that the adoption of its stated recommendations will enhance compliance by all entities in the acquiring industry, as well as the merchants they serve; reduce redundant or inefficient regulatory requirements; and promote the overall integrity and safety of the electronic payments system.

ETA POSITION:

- ETA advocates that, to the greatest extent possible, the PCIDSS become the common standard for data security, explicitly preempting the existing, individual security programs of the payment networks (e.g., CISP, SDP, etc.). Development of this common standard should reflect the input of all members in the payments system to preserve the safety and integrity of the system.
- ETA advocates that a common standard be used among the card brands for merchant classification.
- ETA advocates that the PCIDSS safe harbor exemptions be clarified and strengthened to address the evolving complexity of data security for those entities that make reasonable compliance efforts.
- ETA advocates that the payment networks expand efforts to increase awareness of data security violations and publicize best practices on how to avoid such infractions.



2011 Industry Relations Policy Position

ISSUE: Payment Product Convenience Fees

Free market forces should dictate how a merchant will accept payment products. Restrictions on merchants' ability to impose their own methodologies for accepting payment cards could be construed as anti-competitive. Allowing merchants the unilateral ability to pass on some or all payment card acceptance fees could promote acceptance, potentially reduce the ongoing interchange conflict, and allow market forces to determine if a merchant's practice is viable.

Except under very limited circumstances, most merchants are prohibited from assessing cardholders a fee for accepting payment cards. This prevents merchants from attaining offsetting compensation for expenses associated with accepting electronic payments. This, in turn, deters increased acceptance and diminishes the convenience provided to consumers by offering a variety of payment options.

ETA POSITION:

- ETA advocates that businesses should have the right to establish a convenience fee or discount on any payment product that is properly disclosed to consumers.
- ETA advocates that the payment networks establish general guidelines (e.g., disclosure standards, minimum dollar thresholds, fee limits, etc.) for the use of convenience fees that are to the fullest extent practicable consistent and uniform.



2011 Industry Relations Policy Position

ISSUE: Direct Sponsorship for Qualified Payments Companies

The current system of bank sponsorship for American Express, Discover, MasterCard and Visa has created an ambiguous and sometimes overly burdensome intermediary relationship between entities that set system rules, regulations and requirements and those on the front-line that must carry them out. This operating structure has evidenced limited value to the process of rules enforcement and, because information must be distributed through a downward hierarchy of communication, may have unintentionally exacerbated a lack of compliance by non-financial institution system participants.

ETA believes that the elimination of the sponsoring bank requirement for recognized and well-capitalized acquirer businesses would create a more efficient payments system, improve risk mitigation, and enhance overall industry compliance by providing the card companies with greater awareness/control over "who is doing what."

ETA POSITION:

- ETA advocates that American Express, Discover, MasterCard and Visa undertake a comprehensive review of the current acquirer/sponsorship model to evaluate the market potential and cost/benefits of establishing direct relationships with non-financial institutions, which satisfy established standards, and that would permit such non-financial entities to sponsor third parties.